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ABSTRACT

The North Carolina statewide testing program is designed to determine and ensure the competence of high school graduates, evaluate the educational process, and provide public accountability for educational results. There is little law to guide school administrators in dealing with various ethical issues in statewide testing, but there are some laws that provide ways of dealing with unethical behaviors. School boards should adopt codes of ethics for dealing with standardized tests, and it should be possible to dismiss a teacher if unethical use of test material can be established. Any disciplinary action customarily used in the school district can be used if an employee violates test security. School board policy must determine whether an administrator or school can properly offer incentives to teachers on the condition that their classes perform well on standardized tests. Such incentives are not necessarily unethical, but must be examined carefully. An appendix contains pertinent North Carolina state law related to testing. (SLD)

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SCHOOL MANAGEMENT ADVISOR: ETHICS IN TESTING

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A Series of Discussions on Legal Issues in Elementary and Secondary Education

SCHOOL MANAGEMENT ADVISOR

By Harry E. Wilson, Agency Legal Specialist

NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION EDUCATION BUILDING, RALEIGH, NC 27601-2825 919/715-1000

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BOB ETHERIDGE, SUPERINTENDENT OF PUBLIC INSTRUCTION

Ethics in Testing

LEGAL REQUIREMENTS

G.S. 115C-174.10 through 115C-174.14 address the statewide testing program. The program is designed to accomplish three goals: (1) competency of high school graduates, (2) evaluation of the educational process, and (3) public accountability for educational results. G.S. 14-118.2 relates to obtaining academic credit by fraudulent means. These statutes are reproduced in full in the Appendix. The Appendix also contains a Testing Code of Ethics developed by the Department of Public Instruction in consultation with other interested groups.

INTERPRETIVE ANALYSIS

School systems have been administering standardized tests for years, but recent legislative and administrative developments have placed increased emphasis on test results. Public schools are also moving from the California Achievement Test given in a few grades to State-developed end-of-grade and end-of-course tests. In return for more latitude to make decisions at lower levels, school systems are required to face greater public accountability, focusing largely on student achievement. At the same time, educators are giving more attention to the types of skills that certain tests measure and are questioning the value of standardized tests. Parents, accustomed to traditional testing, are not comfortable with movement toward a new approach. They also want to know where their child stands in relationship to the child's peers in the community and across the nation.

The law regarding the Statewide Testing Program formerly indicated that the program was not to be used to evaluate teacher performance, but recent legislative changes have omitted that language. Indeed, since two purposes of the program are to evaluate the educational process and to provide public accountability for educational results, one could argue that teacher evaluation based partially on test results is allowed or even required. Whether teachers are formally evaluated on the basis of student test results or not, parents often informally evaluate them and demand that their child either have or avoid certain teachers.

Against the increased attention to standardized or state-mandated tests, instances of improper actions by some school employees have come to light. A few teachers have used the standardized test to teach students how to take it as well as to emphaize the answers to specific questions. Others have developed student study guides that contain verbatim or nearly verbatim test questions.

There is little law to guide school administrators in dealing with these and other testing problems - our statutes do not establish a code of ethics or specify the types of conduct that are unethical. Yet there are laws that provide administrators with useful means of handling unethical behavior. The following questions and answers will explore options that administrators should be aware of.

Q: How should school boards assure that employees follow proper testing ethics and procedures?

A: First of all, school boards should adopt a code of ethics governing school employees. The code of ethics could address any situation in which a conflict of interest or unethical conduct might arise. Because student test results have a higher visibility than they once did, the code of ethics should certainly specify what is

The School Management Advisor, a series of comments, questions and answers, and interpretive analyses, is published periodically. Each issue deals with a single topic that is of current concern to school personnel. The contents do not purport to be official legal opinions.

and is not proper use of test materials and what consequences will result from improper behavior.

Q: May a teacher be dismissed for improper use of standardized test material?

A: Yes, but school officials must take care to provide a proper basis for dismissal. First, an ethics or conduct policy that clearly sets out proper and improper actions and potential consequences is essential. Next, the policy must be communicated to the affected staff. Although judgment must be exercised in dealing with violations, the policy must also be administered consistently.

Q: What other actions may schools take regarding teachers or other school employees who violate test security?

A: Any disciplinary action customarily used by the school system may also be used in cases of improper use of test materials. Board policy should set forth those actions. In addition, the board may seek criminal charges against the employee under G.S. 14-118.2. A teacher's evaluation on the TPAI could reflect such improper behavior. Finally, the board may request that the person's certificate be revoked on the basis of immoral conduct by a person that prevents the person's ability to perform his or her professional functions in a professional manner. The test publisher may also have a copyright violation action against the employee.

Q: May the Department of Public Instruction or the State Board of Education take any action when test security appears to have been violated?

A: Yes. The state may disallow the test results of the student group involved and may also call for them to be retested. In appropriate cases, the state may also initiate certificate revocation proceedings.

Q: What constitutes a violation of test security or disclosure of test contents?

A: There is no one answer to this question. School board policy could provide guidance. One suggested range of behaviors that reveals the spectrum from clearly proper to improper behavior follows:

- The instructor has no personal knowledge of the test contents, and a third person administers the test.
- The instructor knows what the test measures and aligns instruction to the goals of the test.
- The instructor aligns instruction to the specific objectives of the Standard Course of Study.
- The instructor develops a set of test items independent of those used by the State and uses it to assess student progress, allowing students to practice with the test format.
- The instructor builds a test parallel to the State test that addresses only the areas addressed by the State test.
- The instructor possesses the actual State test and teaches toward test items.
- The instructor gives direct assistance to students as they take the test. This assistance might be intentional, such as displays in the room that contain useful information, or unintentional, such as displays inadvertently left up or uncovered during the test.
- The instructor gives answers to students or changes answers on the answer document.

The line between proper and improper action likely falls between the fourth and fifth illustrations.

Q: May the principal or other school official properly offer incentives to teachers on the condition that their classes perform well on standardized tests?

A: Possibly. It should first be determined if school board policy prohibits the action. If not, then other factors need to be examined. An incentive established at the beginning of the school year that is designed to promote improved or increased instruction in the subject area may well be permitted, while an incentive offered shortly before the test would not. The latter situation does not allow sufficient time for instruction to have an effect on student performance and implies that improper actions by staff will be rewarded. In other words, this appears to be an inducement to cheat. Another permissibe action would be a reward given after the fact such that there could be

no possible inducement to cheat.

Q: What are some other examples of improper behavior?

A: A teacher might realize that the test covers material unfamiliar to the students, then stop the test to give instruction on that material. A teacher might explain a question to a student. Leaving the room unsupervised during the test or writing an example that explains an answer on the board violates proper test administration. Losing track of test booklets or keeping a test booklet for use as reference material is also improper.

APPENDIX
State Law Relating to Testing

§ 115C-174.10. Purposes of the Statewide Testing Program.

The three testing programs in this Article have three purposes: (i) to assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function as a member of society; (ii) to provide a means of identifying strengths and weaknesses in the education process; and (iii) to establish additional means for making the education system accountable to the public for results.

§ 115C-174.11. Components of the testing program.

(a) Annual Testing Program.—The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board of Education for first and second grade students, and shall not use standardized tests. The State Board of Education shall report to the Joint Legislative Commission on Governmental Operations prior to May 1, 1988, and to the Senate and House Appropriations Committees on Education prior to March 1, 1989, on the assessment instruments it develops.

If the State Board of Education finds that testing in grades other than the first and second grade is necessary to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states.

(b) Competency Testing Program.

(1) The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of non-public schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.

(2) The tests shall be administered annually to all tenth grade students in the public schools. Students who fail to attain the required minimum standard for graduation in the tenth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested only on those parts they fail. Students in the tenth grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.

(3) The State Board of Education may develop and validate alternate means and standards for demonstrating minimum competence. These standards, which must be more difficult than the tests adopted pursuant to subdivision (1) of this subsection, may be passed by students in lieu of the testing requirement of subdivision (2) of this subsection.

(4) Funds appropriated for the purpose of remediation support for students who fail the high school competency test shall be distributed in accordance with rules promulgated by the State Board of Education. The State Board of Education shall allocate remediation funds to institutions administered by the Department

of Human Resources on the same basis as funds allocated to other local education agencies.

(c) End-of-course and End-of-grade Tests. — The State Board of Education shall adopt a system of end-of-course and end-of-grade tests for grades three through 12. These tests shall be designed to measure progress toward selected competencies, especially core academic competencies, described in the Standard Course of Study for appropriate grade levels. With regard to students who are identified as not demonstrating satisfactory academic progress, end-of-course and end-of-grade test results shall be used in developing strategies and plans for assisting those students in achieving satisfactory academic progress.

§ 115C-174.12. Responsibilities of agencies.

(a) The State Board of Education shall review the recommendations of the Commission on Testing and select the tests that it believes will provide the best measures of the levels of academic achievement attained by students in various subject areas. The State Board of Education shall also establish policies and guidelines necessary for carrying out the provisions of this Article.

(b) The Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for the statewide administration of the testing program provided by this Article and for providing necessary staff services to the Commission.

(c) Local boards of education shall cooperate with the State Board of Education in implementing the provisions of this Article, including the regulations and policies established by the State Board of Education. Local school administrative units shall use the annual and competency testing programs to fulfill the purposes set out in this Article. Local school administrative units are encouraged to continue to develop local testing programs designed to diagnose student needs further.

§ 115C-174.13. Public records exemption.

Any written material containing the identifiable scores of individual students on any test taken pursuant to the provisions of this Article is not a public record within the meaning of G.S. 132-1 and shall not be made public by any person, except as permitted under the provisions of the Family Educational and Privacy Rights Act of 1974, 20 U.S.C. 1232g.

§ 115C-174.14. Provisions for nonpublic schools.

All components of the Statewide Testing Program shall be made available to nonpublic schools in the manner prescribed in G.S. 115C-551 and G.S. 115C-559.

§ 14-118.2. Assisting, etc., in obtaining academic credit by fraudulent means.

(a) It shall be unlawful for any person, firm, corporation or association to assist any student, or advertise, offer or attempt to assist any student, in obtaining or in attempting to obtain, by fraudulent means, any academic credit, grade or test score, or any diploma, certificate or other instrument purporting to confer any literary, scientific, professional, technical or other degree in any course of study in any university, college, academy or other educational institution. The activity prohibited by this subsection includes, but is not limited to, preparing or advertising, offering, or attempting to prepare a term paper, thesis, or dissertation for another and impersonating or advertising, offering or attempting to impersonate another in taking or attempting to take an examination; and the giving or changing of a grade or test score or offering to give or change a grade or test score in exchange for an article or value or money.

(b) Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both. This section includes the acts of a teacher or other school official; however, the provisions of this section shall not apply to the acts of one student in assisting another student as herein defined if the former is duly registered in an educational institution in North Carolina and is subject to the disciplinary authority thereof.

TESTING CODE OF ETHICS
Testing Standards

Test Security

1. School personnel responsible for the test-

ing program should develop appropriate local policies and procedures to ensure maximum test security.

2. Test materials must be stored in a secure place, preferably under lock and key, prior to and following administration.

3. Only school personnel who have a legitimate need should have access to test materials. Test booklets or questions are not to be copied or paraphrased in any way for any reason without permission of the test publisher.

4. School personnel responsible for the testing program should be properly instructed in test administration procedures and know the importance of strictly following the directions as outlined by the test publisher.

5. Before test administration, materials are to be carefully counted and distributed in an orderly fashion according to instructions provided with the test. After testing, all test booklets and answer sheets should be accounted for and returned to a secured facility or forwarded for scoring.

6. Any breach of security, loss of materials, failure to account for materials, or other deviation from acceptable security procedures should be reported immediately to the principal, local test coordinator and the local school superintendent.

Test Administration

1. The person responsible for the school testing program must have formal training in the area of measurement and testing. It is this person's responsibility to instruct test administrators, proctors and others involved in the testing program on proper test administration procedures.

2. Administrators of standardized tests must rigorously follow the administrative procedures established by the publisher. Responsibilities include establishing a positive environment, reading the directions word for word (without modification), and strictly adhering to time schedules. Providing verbal and non-verbal clues, rephrasing directions, teaching items on the test or stopping in the middle of a test to teach something unfamiliar to students is not permitted. Any deviation from stated directions will make the sessions a non-standard administration and may result in sessions being declared a misadministration. Unless non-standard procedures are approved in advance, any divergence from the directions must be documented and reported to the principal, local test coordinator and local school superintendent.

3. Students and/or parents are to be given proper notification before testing and provided information on the purposes of a test and intended uses of the results.

4. Coaching of students on specific test content or dissemination of test materials (including reproductions or modifications) prior to testing is not permitted. Such procedures will make the results invalid. However, it is desirable to teach students general test-taking skills in order to make them aware of strategies that could enhance their performance on tests.

5. Students are not to be coerced or made to feel uncomfortable about a test. Such is likely to produce stress in some students, and may negatively influence their performance.

6. The testing environment is to be reasonably comfortable and well-lighted. There should be minimal opportunity for distraction. All materials to be used by students should be readable and understandable. Testing sessions must be monitored to ensure students' comfort, as well as to maintain proper administrative procedures.

Scoring

School personnel in charge of scoring must maintain the highest ethical standards. They must follow the scoring directions and routinely check results for accuracy. Scorers should be trained to recognize inappropriate or impossible scores. All score reports must be carefully labeled and dated.

Reporting

1. Test scores must not be released to students, parents, legal representatives, teachers or the media without appropriate interpretations and supporting guides. Materials dealing with test results should provide the following: 1) a description of the test; 2) a description of the subject matter covered; 3) the meaning of the scores; 4) a warning about common misinterpretations; and 5) the intended use of scores. Special effort should be made to avoid attaching unwarranted connotations to group IQ or grade equivalent scores.

2. School personnel who have the responsi-

bility for disseminating test results should have a thorough understanding of the test manuals, handbooks, user's guides and technical reports.

3. Individual test scores are best presented as approximations and not as absolutes. It is preferable to report results as a limited score range rather than points.

4. Although test construction includes reviews to eliminate or minimize test bias, tests should be reviewed for potential bias and test results qualified if sources of bias have affected the scores of a particular individual, gender, group or class.

5. Test scores are to be presented as one source of information about a student or group of students and should not be used alone for placement, referral, and other consequential decisions on the education of a student.

6. When cutoff scores are used as part of a scheme to select, classify or certify students, the method and rationale for arriving at that cutoff score must be supported by research with documentation available for review.

Interpreting Results

1. School personnel must not attempt to interpret test data before studying and fully understanding a test manual that includes information on 1) administration and scoring; 2) norms and related technical features; 3) reliability; and 4) validity. Assistance in interpretation should be sought from the test publisher or other expert personnel if necessary.

2. School personnel must be acutely aware of the limitations of test data and not assert relationships between instructional strategies and test performance that are unsupported by empirical evidence.

3. Those interpreting test results are to be aware of ethnic and cultural differences among students and the impact that these differences may have on test results. The status of a student in comparison to a norm group can be supplemented by sub-group norms for similar groups of students. Also, equal emphasis can be given to growth trends rather than to normative comparisons.

4. Unless a means can be established and statistically supported which controls the many factors that influence student test results, test scores should not be used in formal teacher or principal evaluations. When test results are used as part of teacher self-analysis, teachers and their supervisors are expected to focus on areas of excellence, as well as areas in need of improvement. All analyses must be done cautiously with reasonable expectations being set as goals for students and schools. Teachers who perceive pressure to raise students' test scores may pressure their students with unrealistic demands, thereby creating anxiety and apprehension to the detriment of the students' adjustment and feelings of self worth. Appropriate mechanisms should be established for teachers and other school personnel through existing channels to address unrealistic demands.

Standards for Teachers and School Administrators

Teachers play an important role in preparing students for standardized testing. As a result, student performance or reaction to testing is greatly influenced by the perceptions of teachers. Consequently, it is crucial that teachers display a positive attitude towards testing. Listed below are 11 practices that teachers and administrators should adhere to in fulfilling their testing responsibilities.

1. When discussing standardized tests with students or parents, teachers and administrators have a responsibility to be factual. Personal opinions, whether positive or negative, should be channeled to appropriate professional personnel for review and clarification.

2. Teachers and administrators are to fulfill the requirements of the Standard Course of Study. Instructional component should not be geared solely to preparing students to score well on standardized tests.

3. Students must be encouraged to do their best and instructed not to worry if they do not know the answer to a test question. As teachers cover the content of the Standard Course of Study, students are expected to show their level of mastery on standardized tests of this curriculum; however, there will always be some test materials that will not be covered and may be unfamiliar to students.

4. Students should be informed about characteristics of norm-referenced and criterion-referenced tests. (i.e., norm-referenced tests indicate the performance of a student relative to his/her peers; criterion-referenced tests, on the other hand, seek to ascertain whether students have mastered particular skills or objectives.) Generally, cut-off levels, if applicable, are set by the State Board of Education. Students scoring below the cut-off level may be required to undergo further testing, diagnosis or instruction to better identify weaknesses and help them reach a level of competence.

5. Students are to be informed of upcoming tests, told what to expect and given an opportunity to become familiar with the types of questions covered on the test. However, they are not to be drilled or coached on specific test content. It is important that students receive guidance and training in test-taking skills and anxiety reducing techniques.

6. Under no circumstances are students to be coerced or threatened with failure if their performance is not as desired. Any perceived pressure to increase academic performance and therefore raise test scores must not be transmitted to students. One of the tenets of effective teaching is that all students are expected to give their best on all school-related work which includes standardized testing.

7. Teachers may not attempt to raise test scores of a particular class or cohort by excluding low scoring students or groups of students from testing.

8. Scores on standardized tests must not be the sole determinant of whether a student is to be retained or promoted. The Basic Education Program (BEP) specifies a three-phase promotion testing program in grades 3, 6 and 8 to assist students who score below the 25th national percentile for their grade level.

9. The curriculum is not to be taught simply to raise test scores. The weaknesses of students as revealed by test scores are expected to be considered in curriculum planning.

10. Test publishers must provide information on their test's strengths and weaknesses. However, the ultimate responsibility for appropriate use and interpretation belongs to the test users. It is important that teachers consult with the school psychologist, testing coordinator or other personnel with advanced training in tests and measurement for clarification of test scores.

11. Access to tests must be limited, but on rare occasions a parent or guardian who indicates a strong need to examine a test may do so in the presence of a school representative.